



Department of Energy

**Ohio Field Office
Fernald Area Office**
P. O. Box 538705
Cincinnati, Ohio 45253-8705
(513) 648-3155



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MAY 27 1999

Mr. Paul D. Pardi
Supervisor, Division of Hazardous Waste Management
Ohio Environmental Protection Agency
401 East 5th Street
Dayton, Ohio 45402-2911

DOE-0795-99

Dear Mr. Pardi:

OPERABLE UNIT REMEDIAL ACTION WORK PLAN RESPONSE TO COMMENTS

The enclosure to this letter provides a clarification to our response to your comment on the Operable Unit 1 Remedial Action Work Plan and documents our telephone conference of May 26, 1999. If you have any further questions, please contact me at (513) 648-3127, or Terry Hagen at (513) 648-5261.

Sincerely,

Dave Lojek
Team Leader, OU1

FEMP:Lojek

cc w/enclosure:

J. Hall, OH/FEMP
J. Reising, OH/FEMP
T. Schneider, OEPA-Dayton
J. Saric, USEPA-V, SRF-J5
D. Carr, FDF/52-2
D. Dalga, FDF/52-1
T. Hagen, FDF/65-2
M. Jewett, FDF/52-2
AR Coordinator, FDF/78

cc w/o enclosure:

A. Tanner, OH/FEMP
ECDC, FDF/52-7

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OU1 REMEDIAL ACTION WORK PLAN - COMMENT RESPONSE

ATTACHMENT TO DOE LETTER DOE-0795-99

The purpose of this attachment is to further clarify DOE's position concerning listed waste issues associated with the FEMP's Operable Unit 1 Waste Pits as stated in DOE's March 23, 1999 summary letter. This letter was provided to Ohio EPA as part of the comment response package for the Operable Unit 1 Remedial Action Work Plan. Specifically, you had asked for clarification as to DOE's definitive position regarding the NEC Solvent area of inquiry (and any associated path forward issues), and DOE's regulatory basis for concluding that no listed wastes were associated with the remaining six areas of inquiry.

In response to your first concern, DOE has concluded that the NEC Solvent issue does represent an instance of listed waste disposal, and DOE is prepared to deal with this accordingly. The document reviews associated with the NEC Solvent area of inquiry also indicated that the solvents were placed in native soils within, or adjacent to, the Burn Pit (and outside the other six waste pits and their boundaries). Given this finding that the NEC solvents were disposed of in environmental media rather than the other waste pit materials, DOE intends to utilize EPA's November 13, 1986 Contained-In Memorandum to develop an action plan for addressing this material. Briefly, this Memorandum states that any mixture of a non-solid waste (e.g., soil or groundwater) and a RCRA listed hazardous waste must be managed as a hazardous waste as long as the material contains (i.e., is above health based levels) the listed hazardous waste. At contaminant concentrations below the established health based levels, the mixture is no longer considered RCRA hazardous.

As a follow-up action, DOE will be preparing a field sampling plan to investigate the extent of NEC solvent contamination in the area of disposal, and will propose health based levels for guiding the sampling activity at that time. This plan will be submitted to both EPA and Ohio EPA for approval prior to conducting the field investigation. DOE will also be proposing a schedule for both submittal of the plan and execution of the field work.

In response to your second concern, a number of EPA Guidance Documents derived from the CERCLA National Contingency Plan discuss the standard of care for document reviews focused on establishing the RCRA regulatory status of CERCLA remediation wastes. Briefly, this guidance states that site managers are not required to presume that a CERCLA hazardous substance is RCRA hazardous waste unless there is affirmative evidence to support such a finding. Site managers are expected to use "reasonable efforts" to determine whether a substance is a listed or characteristic waste (1). The guidance also indicates that the mere presence of toxic substances in a waste does not automatically make the waste a RCRA hazardous waste. The origin of the toxicants must be known in order to determine that they are derived from a listed hazardous waste. If the exact origin of the toxicants is not known, the wastes cannot be considered RCRA hazardous waste unless they exhibit one or more of the characteristics of a RCRA hazardous waste (i.e., ignitability, corrosivity, reactivity, or toxicity) (2). The guidance also suggests that for making RCRA determinations at CERCLA sites, the lead agency should use available information, manifests, storage records, and vouchers in an effort to ascertain the nature of the site contaminants. When this documentation is not available, the lead agency may assume that the wastes are not listed RCRA hazardous wastes (3).

OUI REMEDIAL ACTION WORK PLAN - COMMENT RESPONSE

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This position was again reiterated in 1991 when EPA stated that site managers should not assume that a waste considered to pose a potential risk at a CERCLA site is a listed or characteristic hazardous waste, unless there is positive evidence (records, test results, or other waste property knowledge) to support such a determination (4). And finally, in their most recent 1998 guidance, EPA indicates that when a facility owner/operator makes a good faith effort to determine if a material is a listed hazardous waste, but cannot make such a determination because the documentation regarding a source of contamination, contaminant, or waste is unavailable or inconclusive, one may assume the source, contaminant, or waste is not listed waste and, therefore, provided the material in question does not exhibit a characteristic of hazardous waste, RCRA requirements do not apply (5).

DOE utilized the standard of care represented within these EPA guidance documents to determine 1) that the NEC Solvents area of inquiry did represent an instance of listed hazardous waste disposal, and 2) to conclude that the remaining areas of inquiry summarized in DOE's letter did not represent instances of listed hazardous waste disposal.

REFERENCES

1. U.S. Environmental Protection Agency, 1989, "Determining When Land Disposal Regulations (LDRs) are Applicable to CERCLA Response Actions", (OSWER Directive 9347.3-O5FS), EPA, Washington, D.C.
2. U.S. Environmental Protection Agency, 1984, "Determining if the Soils from Missouri Dioxin Sites are Hazardous", (OSWER Directive 9441.0184), EPA, Washington, DC.
3. U.S. Environmental Protection Agency, 1988, "CERCLA Compliance With Other Laws Manual", PB90-272535CDH, EPA, Washington, DC.
4. U.S. Environmental Protection Agency, 1991, "Guide to Management of Investigation Derived Wastes", (OSWER Directive 9345.3-02FS), EPA, Washington, DC.
5. U.S. Environmental Protection Agency, 1998, "Management of Remediation Waste Under RCRA", (OSWER Directive EPA530-F-98-026), EPA, Washington, DC.

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